



C.M.A(MD)No.410 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

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1.Anusha

2.Minor Jina

3.Gabriel

4.Alphonse Mary

(Minor 2nd appellant represented

through their mother 1st appellant)

: Appellants/Claimants

Vs.

1.Jebasingh

2.The Branch Manager,

Tamil Nadu State Express Transport Corporation Ltd.,(TNSETC)

Marthandam Branch,

Marthandam Post, Nalloor Village,

Vilavancode Taluk,

Kanyakumari District.

3.Ravichandran

4.M/s.BL Transports Private Ltd.,

Office No.61/69, Athi Pedu Village,

Ponneri Taluk,

Thiruvallur District.

Pin No.601 204.



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5.United India Insurance Company ltd.,
Rep. by its Branch Manager,
Monday Market,
Neyyor Post, Eraniel Village,
Kalkulam Taluk,
Kanyakumari District.

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 14.11.2018 passed in M.C.O.P.No.47 of 2016 on the file of the Subordinate Judge-cum-Motor Accident Claims Tribunal, Padmanabhapuram.

For Appellants	: Mr.K.P.Narayanakumar
For R1	: Mr.V.Kannan
For R2	: No appearance
For R5	: Mr.A.S.Mathialagan

JUDGMENT

[Judgment of the Court was made by **K.K.RAMAKRISHNAN.J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal-cum-Sub-Court, Padmanabhapuram in M.C.O.P.No.47 of 2016, dated 14.11.2018, the claimants have filed the present appeal “for enhancement of compensation”.



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2.The appellants/claimants filed claim petition in M.C.O.P.No. 47/2016, on the file of the Motor Accident Claims Tribunal Sub-Court, Padmanabhapuram claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) for the death of one Jinish Hetmet, who is the husband of the first appellant, father of the second appellant and son of the appellants 3 & 4 in the accident that occurred on 20.10.2015. By the order, dated 14.11.2018, the Tribunal awarded a sum of Rs.13,50,000/- (Rupees Thirteen Lakhs Fifty Thousand only) as compensation.

2.1.The first respondent is the driver of the vehicle bearing Registration No.TN-01-N-4910, the second respondent is the owner-cum-insurer of the said vehicle and the third respondent is the driver of the vehicle bearing registration No.TN-18-K-6939. The fourth respondent is the owner of the vehicle bearing Registration No.TN-18-K-6939.

3.Facts of the Case:-

According to the appellants, on 20.10.2015 at about 09.20 p.m., the deceased along with other passengers were travelling in a TNSETC bus bearing registration No.TN-01-N.4910 from Chennai to Nagercoil. When



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the bus was nearing Irungaloor Opposite of SRM Medical College at 9.20 p.m., the first respondent drove his bus in a rash and negligent manner without following the traffic rules and regulation and hit the third respondent's lorry bearing Registration No.TN-18-K-6939. The third respondent also had parked the said vehicle in the No parking area without following the signals and other required formalities. The first respondent's vehicle violently hit the lorry and the deceased sustained multiple injuries. The neighbours of that places brought the deceased to KAPV Medical College Hospital, Tiruchirappalli. The doctor informed that he was dead. The jurisdictional police filed the First Information Report in Cr.No.521 of 20215 under Section 304A IPC against the first respondent and after investigating the matter, the police filed the final report against the driver of the insured vehicle.

4.The respondents 1, 3 & 5 filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the insured bus. The claim is excessive and prayed for dismissal of the claim petition.



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5. Before the Tribunal, to prove the case of the claimants, P.W.1 was examined and Ex.P1 to Ex.P17 were marked. On the side of the respondents R.W.1 was examined and Ex.R1 was marked.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, Ex.P1 FIR and arguments of the counsel for the claimants and the respondents held that the accident occurred only due to the rash and negligent driving of the first respondent. The said vehicle belongs to the second respondent and hence, directed the second respondent to pay a sum of Rs.13,50,000/-(Rupees Thirteen Lakhs Fifty Thousand only) as compensation. The Tribunal awarded the compensation of Rs.13,50,000/- to the claimants under the following heads:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Loss of Income	Rs.12,80,000/-
2	Loss of Love and Affection	Rs. 40,000/-
3	Funeral Expenses	Rs. 15,000/-
4	Loss of Estate	Rs. 15,000/-
Total		Rs.13,50,000/-

The appellants have filed the appeal for enhancement of compensation.



7.Submission of the learned counsel for the appellants:

The learned counsel for the appellants submitted that deceased was working as a pharmacist in M/s.Mens Shana Pharmacy, T.Nagar, Chennai and Accounts Executive in Maruthi Agencies, Chennai. He was getting a salary of Rs.40,000/- per month. The Tribunal failed to consider Ex.A7, Ex.A8, Ex.A10 and Ex.A11 to Ex.A17 and has wrongly fixed the monthly income of the deceased as Rs.10,000/-. The tribunal wrongly deducted 1/3rd for his personal expenses instead of 1/4th since 4 members are dependants. Hence, the appellants sought for enhancement of compensation.

8.Submission of the learned counsel for the second respondent:

The learned counsel for the second respondent submitted that the tribunal has rightly taken the income of the deceased and awarded compensation and no interference is required and prayed for dismissal of the appeal. The third and fourth respondents are the driver and owner of the insured lorry respectively and they were set ex-parte before the tribunal. Since the insurance company had not challenged the liability and quantum, their presence is not necessary to decide the entitlement of the



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higher compensation and therefore, this Court accepts the memo filed by the appellants to dispense with the notice.

9. We have heard the learned Counsel appearing for the appellants and the learned counsel appearing for the respondents and also perused all the materials available on record.

10. Since the appellants/claimants filed this appeal only relating to the quantum, this Court does not go into the merits on the negligence and other aspects.

11. The following point arises for consideration of this appeal:

11.1. Whether the appellants are entitled to enhancement of compensation?.

12. Discussion on quantum:

According to the appellant, deceased was working as pharmacist in maruthi agency. He completed his diploma in pharmacy course and registered in the pharmacy council and the registration certificate was marked as Ex.P11 and also he completed diploma in office automation and the certificate was marked as Ex.P.10. Further he was working as a pharmacist in maruthi agency and also Mens Sana Pharmacy and the



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salary certificate issued by them were marked as Ex.P7 and P8. In spite of that, the tribunal has fixed monthly income of deceased as Rs.10,000/- only. At the time of the accident, deceased died leaving his 7 months old baby. Considering the salary certificate and education qualification, this court inclines to increase the monthly salary of the deceased from Rs. 10,000/- to Rs.12,000/- to meet the ends of justice and to arrive the just compensation. Therefore, this Court is inclined to increase the monthly income of the deceased from Rs.10,000/- to Rs.12,000/-.

12.1.Calculation of the amount:

(i) monthly income = Rs.12,000/-

(ii) **Add :** 40% future prospects

Rs.12,000 +Rs.4,800/-(40/100) = Rs.16,800/-

(iii) **Less:** Personal expenses 1/4

Rs.16,800/- (-) Rs.4,200 = Rs.12,600/-

(iv) Annual Income

Rs.12,600/- X 12 = Rs.1,51,200/-

(v) Multiplier

Rs.1,51,200/- x 16 = Rs.24,19,200/-

(vi) **Loss of Income** = **Rs.24,19,200/-**



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12.2. In addition to that, the tribunal has not granted any amount for consortium and loss of love and affection. Therefore, this Court as per the judgment of the Hon'ble Supreme Court in the case of (*National Insurance Co. Ltd., Vs. Pranay Sethi*), reported in *2017(2) TNMAC 609(SC)*, grants a sum of Rs.40,000/- as consortium to the wife of the deceased. The claimants 2 to 4 are entitled to Rs.40,000/- each towards loss of love and affection. The tribunal has not granted any amount for transport expenses. Therefore, this Court is inclined to grant a sum of Rs.15,000/- for transportation.

13. Conclusion:

In the light of the above said discussion, claimants would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Re-quantified amount by this Court (in Rupees)</i>	<i>Status</i>
1	Loss of Income	12,80,000/-	24,19,200/-	Enhanced
2	Loss of love and affection to the claimants 2 to 4 (40,000 x 3)	40,000/-	1,20,000/-	Enhanced
3	Funeral Expenses	15,000/-	15,000/-	confirmed



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4	Loss of Estate	15,000/-	15,000/-	confirmed
5	Loss of Consortium to the wife		40,000/-	Granted
6	Loss of Transportation		15,000/-	Granted
Total		Rs.13,50,000/-	Rs.26,24,200/-	Enhanced

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed and compensation awarded in M.C.O.P.No.47 of 2016 on the file of the Motor Accident Claims Tribunal cum Sub Court, Padmanabhapuram, dated 14.11.2018 is here by enhanced from ***Rs.13,50,000/- to Rs.26,24,200/-*** with interest at the rate of 7.5% p.a.from the date of claim petition till the date of realization.

15.Apportionment:

The second respondent is directed to deposit the enhanced award amount, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. The claimants are entitled to receive the following compensation amount.

<i>Claimants</i>	<i>Amount (in Rupees)</i>
Anusha/wife of the deceased	15,74,520/-
Minor Jina/ daughter of the deceased	5,24,840/-
Gabriel/father of the deceased	2,62,420/-
Alphonse Mary/mother of the deceased	2,62,420/-
Total	Rs.26,24,200/-



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The claimant Nos.1, 3 and 4 are entitled to withdraw the enhanced award amount along with proportionate accrued interest and cost, less the amount already withdrawn, if any and further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalized banks, as fixed deposit under the Cumulative Deposit Scheme, till the minor becomes major and the first appellant is entitled to accrued proportionate interest once in six months. The appellants are directed to pay the excess court fee, if any. There shall be no order as to costs.

**(V.B.S.J.) (K.K.R.K.J.)
11.03.2024**

Index : Yes/No
Internet : Yes/No
am/sbn

To

- 1.The Subordinate Judge-cum-Motor Accident Claims Tribunal,
Padmanabhapuram.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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**V.BHAVANI SUBBAROYAN.J.,
and
K.K. RAMAKRISHNAN.J.,**

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